

D.U.P. NO. 89-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CAMDEN COUNTY COLLEGE &
ASSOCIATION OF ADMINISTRATIVE PERSONNEL,
NEW JERSEY EDUCATION ASSOCIATION/NATIONAL
EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-89-64

GEORGE P. LaMARRA,

Charging Party.

SYNOPSIS

The Director of Representation refuses to issue a complaint on the allegations that the NJEA and NEA declined to provide LaMarra with counsel for a PERC hearing. The Director finds that refusal to provide counsel is an internal union matter.

D.U.P. NO. 89-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CAMDEN COUNTY COLLEGE &
ASSOCIATION OF ADMINISTRATIVE PERSONNEL,
NEW JERSEY EDUCATION ASSOCIATION/NATIONAL
EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CI-89-64

GEORGE P. LaMARRA,

Charging Party.

Appearances:

For the Respondent, Camden County College
Dr. Ramsay, President

For the Respondent, Association of Administrative Personnel
Dennis Giordano, President, NJEA
Mary Hatwood Futrell, President, NEA

For the Charging Party
George P. LaMarra, pro se

REFUSAL TO ISSUE COMPLAINT

On January 20, 1989, George P. LaMarra ("LaMarra") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that Camden County College ("College"), the New Jersey Education Association ("NJEA") and the National Education Association ("NEA") violated subsections

5.4(a)(1), (2), (3) and (7)^{1/} and 5.4(b)(1), (3) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The charge alleges that the NJEA and NEA committed an unfair practice by refusing to provide LaMarra with counsel for a hearing,^{3/} resulting from an unfair practice charge he filed against the College, NJEA, NEA and the Association of Administrative Personnel ("Associaton").^{4/} LaMarra alleges that it is an unfair practice for the NJEA and NEA to deny him counsel while providing counsel to the Association.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

3/ Docket No. CI-H-89-15.

4/ The Association appears to be the NJEA bargaining unit that LaMarra was a member of when employed by the College.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.^{5/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{6/} The Commission's rules provide that I may decline to issue a complaint.^{7/}

For the reasons set forth below, I do not find that the Commission's complaint issuance standards have been met.

Although LaMarra named three respondents to this charge and cited seven subsections of the Act, the substance of the charge concerns the failure of the NJEA to provide him counsel for a PERC hearing. Breach of the union's duty of fair representation is the only conceivable basis for an unfair practice charge based on the facts LaMarra alleges. However, the Commission has held that

^{5/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

^{6/} N.J.A.C. 19:14-2.1.

^{7/} N.J.A.C. 19:14-2.3.


failure to provide counsel or payment for legal fees is an internal union matter that does not involve the duty of fair representation. Bergen Comm. Coll. Fac. Assn. (Shaw), P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984). The charging party in Bergen based his complaint on the failure on the NJEA and NEA to finance a federal lawsuit against an officer of their local affiliate. The Commission held that:

...such a lawsuit could discredit the local affiliate, (and) divide its members into opposing camps...No case, private sector or public, has yet held that the duty of fair representation compels a union affiliate to choose sides against a union officer in such an intra-union dispute and to pay the bill for a lawsuit which could produce such deleterious and divisive results. 10 NJPER at 263.

The facts of this charge are almost analogous to Bergen. The Act's conferral of unfair practice jurisdiction does not empower the Commission to resolve intra-union disputes. In re Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982) A union's refusal to provide counsel to a member in a suit against it is an internal matter, not an unfair practice. Bergen .

Accordingly, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint in this matter. The Charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Genber, Director

DATED: February 16, 1989
Trenton, New Jersey